

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ISABEL RUBINAS, and
IJR CORP.,

Plaintiffs,

V.

NICOLAS MADUROS, DIRECTOR,
CALIFORNIA DEPARTMENT OF
TAX & FEE ADMINISTRATION,

Defendant.

Case No. 1:21-cv-00096

Hon. Edmond E. Chang

JOINT STATUS REPORT

Pursuant to the Court's January 18, 2021 Memorandum Opinion and Order, R. 17, the Parties submit the following Joint Status Report.

The Parties respectfully suggest that an efficient path forward is to provide targeted briefing in support of and in opposition to Plaintiffs' motion for a preliminary injunction. In light of the Court's TRO ruling, and to conserve resources, Plaintiffs will agree to take a dismissal if the Court denies the motion for preliminary injunction on the grounds that the Court lacks jurisdiction, such that defendant Maduros would not need to file a motion to dismiss.

Plaintiffs intend to focus specifically on the Internet Tax Freedom Act claim. In Plaintiffs' view, the interaction between the ITFA's text and preemptive goals, California's refund regime, and the Tax Injunction Act and comity doctrine is a novel issue with important implications for Ms. Rubinas and similarly-situated merchants. The Court also identified a question about whether the ITFA provides a private right of action, R. 17 n.7, which the Parties have not briefed. Supplemental briefing would provide a more complete record for this Court and the Seventh Circuit on which to consider those issues, while mitigating the risk of appellate waiver issues due to the

compressed and limited nature of the current record (which results, of course, from Plaintiffs' TRO request). Given the complexity and stakes, a modest amount of additional briefing is warranted.

Defendant Maduros disagrees that the ITFA provides a basis for this Court to exercise subject-matter jurisdiction, to overcome California's sovereign immunity, or to give Ms. Rubinas standing (as opposed to IJR Corp.), but defendant Maduros does not oppose plaintiffs' proposal for further briefing.

The Parties accordingly propose the following schedule:

- Plaintiffs file their supplemental brief: February 17
- Defendant files its responsive supplemental brief: March 19
- Plaintiffs file their optional supplemental reply brief: March 26

The Parties further agree that Defendant's response to the complaint under Rule 12 will not be due unless the Court concludes that it has jurisdiction, in which case Defendants' responsive pleading will be due thirty days after such a ruling.

Respectfully submitted this 28th day of January, 2021.

s/ Paul K. Vickrey
Paul K. Vickrey
Vitale, Vickrey, Niro, Solon & Gasey LLP
311 S. Wacker Drive, Suite 2470
Chicago, IL 60606
Phone: (312) 236-0733
vickrey@vvnlaw.com

s/ Aaron K. Block
Aaron K. Block
The Block Firm LLC
Georgia Bar No. 508192*
4200 Northside Parkway NW
Building 1, Suite 200
404-997-8419
aaron@blockfirmllc.com
(Admitted pro hac vice)

s/ Paul S. Rafelson

Paul S. Rafelson
Rafelson Schick, PLLC
Florida Bar No. 16958
2255 Glades Road, Suite 319
Boca Raton, Florida 33431
561-326-6529
paul@frsattorneys.com
(Admitted pro hac vice)

***Counsel for Plaintiffs, Isabel Rubinas
and IJR Corp.***

Xavier Becerra
Attorney General of California
Molly K. Mosley
Supervising Deputy Attorney General

/s/ Michael Sapoznikow
Michael Sapoznikow
Gina Tomaselli
Deputy Attorneys General

***Counsel for Defendant Nicolas Maduro,
Director, California Department of Tax and
Fee Administration***

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 28, 2021 the foregoing:

JOINT STATUS REPORT

was filed electronically with the Clerk of the Court for the Northern District of Illinois using the Court's Electronic Case Filing System, which will send notification to the registered participants of the ECF System for this case.

/s/ Paul K. Vickrey
Attorney for Plaintiffs